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BEFORE THE  
POLLUTION CONTROL HEARINGS BOARD  
STATE OF WASHINGTON

IN THE MATTER OF )  
JOHN L. STARKE, )  
 )  
Appellant, )  
 )  
v. )  
 )  
STATE OF WASHINGTON, )  
DEPARTMENT OF ECOLOGY, )  
 )  
Respondent. )

PCHB No. 78-149

FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW  
AND ORDER

This matter, the appeal from respondent's Order of Cancellation of Ground Water Permit No. G3-01281P (QB-47), came before the Pollution Control Hearings Board, Dave J. Mooney, Chairman, Chris Smith and David Akana (presiding), at a formal hearing in Seattle, Washington on October 20, 1978. Appellant appeared pro se; respondent was represented by Robert E. Mack, Assistant Attorney General.

Having heard the testimony, having examined the exhibits, and having considered the contentions of the parties, the Board makes these

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FINDINGS OF FACT

I

Appellant John L. Starke (hereinafter "appellant") is the owner of certain lands located in the Quincy Ground Water Subarea, Grant County, Washington. The permit which is the subject of this appeal allowed the withdrawal from and the application of water upon lands located in the SW 1/4 of Sec. 26, T. 18 N., R. 25 EWM in Grant County.

II

The permit issued March 17, 1975, included a development schedule which indicated that complete application of water was to be made by March 11, 1978. Additionally the permit contained the following provisions:

10. This permit is subject to termination or modification, through issuance of supplemental orders of the Department of Ecology, for good cause, including but not limited to:

- a. Violation of a permit condition;
- b. Obtaining a permit by misrepresentation or failure to fully disclose all relevant facts; and
- c. The receipt of new facts or information that dictate that termination or modification of this permit is necessary to comply with the objectives of chapter 173-134 WAC.

11. The permittee shall apply the water to beneficial use hereunder within three years from the date of this permit or the same shall automatically terminate and be of no further force and effect.

Under the terms of the permit, a well must be drilled no deeper than 200 feet into the underlying basalt; this is the zone within which all artificially stored ground water was found to occur. (See chapter 173-134 WAC.) After receiving the permit, appellant made application for a ground water license from the U.S. Bureau of Reclamation. Marital problems caused appellant to suspend his development plans until his divorce in

1 April, 1977. Thereafter, in June and to November, 1977, appellant  
2 negotiated and received an access easement from the State Department  
3 of Natural Resources.

### 4 III

5 Appellant has a pending application for the appropriation of public  
6 ground water, with an August 20, 1970 priority date. Appellant learned  
7 that respondent might allocate public ground water, most of which is  
8 located below 200 feet into the underlying basalt, if such was found  
9 available in the future.

10 Because of his financial position, appellant did not want to risk  
11 developing the permit for artificially stored ground water by himself.  
12 Appellant assessed the risk as being too high because water yields from  
13 wells drilled on land surrounding his property were inadequate for  
14 irrigation. Appellant would rather drill a well below 200 feet into the  
15 basalt (i.e., tapping public ground water). His application for such is  
16 still pending. At the same time, however, he does not wish to lose the  
17 instant permit for artificially stored ground water which would allow the  
18 drilling of a well not deeper than 200 feet into the basalt. Presently,  
19 the appellant has made no significant developments upon the land or to the  
20 water resource.

### 21 IV

22 Appellant received written notice in June of 1977 that respondent  
23 would act to cancel his permit if the drilling of a well and application of  
24 water to the ground was not substantially under way by March of 1978.  
25 Other notice to the same effect occurred in August, 1977 and January,  
1978. On March 13, 1978, respondent notified appellant that his permit

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1 would be cancelled unless he showed good cause why it should not be  
2 cancelled. Appellant's response was not deemed good cause and an order  
3 cancelling the permit was issued. Appellants appealed the decision to  
4 this Board.

5 V

6 Any Conclusion of Law which should be deemed a Finding of Fact  
7 is hereby adopted as such.

8 From these Findings the Board comes to these

9 CONCLUSIONS OF LAW

10 I

11 With all of the available artificially stored ground water in the  
12 Quincy Subarea allocated to a group of permit holders, respondent's  
13 action in cancelling this permit reflects a policy which encourages promp  
14 development of a limited supply of water. Over 250 applications for  
15 artificially stored ground water are pending and must continue to be held  
16 in abeyance until more water is found to be available. By failing to timely  
17 develop a well, a permit holder delays development of farmland and  
18 deprives another person of that opportunity.

19 In this matter, respondent seeks to cancel appellant's permit because  
20 appellant has not shown it good cause why the permit should not be  
21 cancelled. Looking to RCW 90.03.320 for guidance, which provision is made  
22 applicable to public ground water by RCW 90.44.060:

23 Actual construction work shall be commenced  
24 on any project for which permit has been  
25 granted within such reasonable time as shall  
26 be prescribed by the supervisor of water  
resources, and shall thereafter be prosecuted  
with diligence and completed within the time  
prescribed by the supervisor. The supervisor,

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1 in fixing the time for the commencement of the  
2 work, or for the completion thereof and the application  
3 of the water to the beneficial use prescribed in  
4 the permit, shall take into consideration the  
5 cost and magnitude of the project and the  
6 engineering and physical features to be encoun-  
7 tered, and shall allow such time as shall be  
8 reasonable and just under the conditions then  
9 existing, having due regard for the public welfare  
10 and public interests affected: and, for good cause  
11 shown, he shall extend the time or times fixed as  
12 aforesaid, and shall grant such further period  
13 or periods as may be reasonably necessary, having  
14 due regard to the good faith of the applicant  
15 and the public interests affected. If the terms  
16 of the permit or extension thereof, are not  
17 complied with the supervisor shall give notice  
18 by registered mail that such permit will be  
19 canceled unless the holders thereof shall show  
20 cause within sixty days why the same should not  
21 be so canceled. If cause be not shown, said permit  
22 shall be canceled. (Emphasis added.)

23 We conclude that respondent has set a reasonable period of time  
24 generally applicable to the Quincy Subarea to develop a well and place  
25 water to a beneficial use. For those permit holders who have not met  
26 the development schedule, respondent "shall grant" further periods having  
27 due regard for the "good faith of the applicant and the public interests  
28 affected." Because of litigation involving the property, appellant has  
29 lost thirteen months of the thirty-six month development period in his  
30 permit. He represents that he is willing to drill a well and apply water  
31 to a beneficial use according to the terms of his permit. We conclude  
32 that the public interests would not be detrimentally affected if appellant  
33 were allowed thirteen months, the time lost during litigation, to develop  
34 the water resource according to the terms of his permit. Accordingly,  
35 respondent's Order of Cancellation should be reversed and remanded for an  
36 extension of the development schedule.

37 FINAL FINDINGS OF FACT,  
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II

Any Finding of Fact which should be deemed a Conclusion of Law is hereby adopted as such.

From these Conclusions the Board enters this

ORDER

The Department of Ecology Order of Cancellation of Permit No. G3-01281 (QB-47) is reversed and the matter is remanded to respondent to extend the development schedule therein thirteen months from the date that this order becomes final.

DATED this 11<sup>th</sup> day of December, 1978.

POLLUTION CONTROL HEARINGS BOARD

  
DAVE J. MOONEY, Chairman

  
CHRIS SMITH, Member

  
DAVID AKANA, Member

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